

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0005

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Commodity Exchange Act (“CEA”) empowers the Commission with the authority to require commodity pool operators (CPOs) and commodity trading advisors (CTAs) to maintain books and records and to file reports as required by the Commission. The Commission also has the power to promulgate such regulations as it deems necessary to implement the purposes of the CEA. It is pursuant to this authority that the Commission has promulgated the current reporting requirements for CPOs in Part 4 of the Commission’s regulations.

Regulation 4.22 requires that a CPO distribute an Annual Report to pool participants within 90 calendar days after the end of the pool’s fiscal year, and requires that such Annual Report be prepared in accordance with generally accepted accounting principles (“U.S. GAAP”) and that it be audited by an independent public accountant.

The Commission is proposing to amend Regulation 4.22 to provide to eligible CPOs: (1) an optional alternative to complying with the requirement to compute and present the financial statements in a pool Annual Report in accordance with U.S. GAAP (or in accordance with IFRS); and (2) an optional alternative to complying with the audit requirement for the Annual Report for a pool’s first fiscal year. In each case, an eligible CPO would have the option to elect the alternative (but no obligation to do so) and would claim the exemption by making a notice filing. A CPO claiming the alternative to complying with the audit requirement for the Annual Report for a pool’s first fiscal year would additionally be required to have obtained written waivers from pool participants and would be required to maintain those as required records.

Under this collection, the revised burden figures reflect the proposed notice filing requirements and the requirement to obtain written waivers and maintain the same as required records. The information collections are necessary to enable the Commission and the National Futures Association (NFA) to process the exemptions claims and to monitor compliance with the Annual Report requirements.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The notice filings would be used by Commission staff and staff of the National Futures Association (“NFA”) to determine which CPOs have claimed the exemption(s). This will assist the Commission NFA in reviewing required filings, and in overseeing and confirming compliance by CPOs with their reporting requirements.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

In 2006, the Commission adopted a requirement that commodity pool annual reports be filed electronically, and in 2007, the Commission adopted requirements that exemption notices under Part 4 be submitted electronically. The Commission and NFA permit electronic filings to minimize the burden on registrants and to streamline the process of sending, receiving, and reviewing the filings. The Commission is proposing to have the proposed new notice filings filed with NFA electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The proposed exemptions are new and they represent alternatives to existing regulatory requirements. Without the proposed notice filings, there would be no way for the Commission or NFA to determine which CPOs have elected to use the proposed exemptions, or to discern whether the ordinary reporting requirements or one of the proposed alternatives apply to a CPO.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-I), describe the methods used to minimize burden.

The Commission has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA. The Commission determined that registered CPOs are not small entities for the purpose of the RFA.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

Failure to require Part 4’s disclosures, filings, and recordkeeping could expose the investing public to greater opportunities for fraud and mismanagement and would make monitoring of these entities by the Commission and NFA less effective.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

The rules in question do not require the respondent to report any information to the Commission more often than quarterly.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Respondents are not required to prepare any written responses because all responses will be submitted electronically.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are not required to submit more than an original and two copies of any document.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Respondents must maintain certain records in order to demonstrate compliance with the Part 4 regulations. For enforcement purposes, Commission Rule 1.31 requires that:

All books and records required to be kept by the [Commodity Exchange] Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

The rules do not involve a statistical survey.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The rules do not involve the use of statistical data.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or requiring respondents to submit proprietary trade secrets, or other confidential

information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The rules do not involve a pledge of confidentiality that is not supported by authority established in statute or regulation or the submission of proprietary trade secrets or other confidential information. The Commission has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 C.F.R. 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A copy of the proposed rules has been submitted to the Federal Register for publication and public comment.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any, and on the data elements to be recorded, disclosed, or reported.

The Commission has consulted with staff of NFA regarding electronic submission of the notices to claim the proposed exemptions. The proposed rules will be published in the Federal Register and the Commission will seek comment on this collection associated with the revised rules.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

No such circumstances occur with respect to this collection.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission does not provide respondents with an assurance of confidentiality beyond that provided by applicable law. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The regulations covered by this collection do not require the giving of sensitive information, as the term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hours burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

See Attachment A. Depending on the technical expertise of the filer or recordkeeper, the cost to the public of the hour burdens would average \$182 per hour, for a total of \$6,188.¹

¹ The estimate of the hourly cost is based on salary information for personnel likely to be involved in complying with the proposed rules, which information is taken from SIFMA’s

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major costs factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

Management & Professional Earnings in the Securities Industry 2013, modified by CFTC staff to account for an 1800-hour work-year and multiplied by a factor of 5.35 to account for firm size, employee benefits, and overhead. The estimate is intended to reflect average costs for compiling, analyzing, filing and retaining the information necessary to apply the new Regulation 4.22 exemptions. We recognize that particular entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages. For Regulation 4.22(d)(2), the exemption to use accounting principles standards or practices other than U.S. GAAP, Commission staff believes to draft and file the notice filing will take $\frac{1}{4}$ hour for a junior compliance advisor who earned on average \$62,504 according to the SIFMA survey and require $\frac{3}{4}$ of an hour for a junior accountant who earned on average \$38,912. For Regulation 4.22(g)(2)(ii), the exemption for unaudited first fiscal year Annual Report, staff believes to draft and file a notice filing will take $\frac{1}{4}$ hour for an attorney who earned an average of \$257,664 and $\frac{3}{4}$ of an hour for a junior accountant. Finally, to retain records and waivers, staff believes it will require $\frac{1}{4}$ hour for a junior compliance advisor and $\frac{3}{4}$ of an hour for a junior accountant. Thus, staff estimates that the cost to public would average \$182 per hour, for a total of \$6,188 (obtained by multiplying 34 total hours x \$182).

See Attachment A.

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

This question does not apply.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Under this collection, the revised burden figures reflect the proposed notice filing requirements and the requirement to obtain written waivers and maintain the same as required records.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exceptions exist.

Attachment A

	ESTIMATED # OF RESPONDENTS OR RECORD KEEPERS PER YEAR	REPORTS ANNUALLY BY RESPONDENT	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
REPORTING 4.22(d)(2) (Exemption from U.S. GAAP Requirement)	10	1	10	1	10
REPORTING 4.12(g)(2) (Exemption from Audit Require- ment for first Fiscal year)	12	1	12	1	12
RECORDKEEPING 4.12(g)(2) (Requirement to keep waivers)	12	1	12	1	12
GRAND TOTAL	22 ²		34		34

² Respondents to reporting requirement under Regulation 4.12(g)(2) are identical to the respondents to the recordkeeping requirement and are only counted once.